

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DOYLE TUCKER, an individual, and
NEVA TUCKER, an individual,

Plaintiffs,

v.

VICTOR PEREZ, an individual,
MARTIN D. MEYER, an individual,
JEFFERY J. MEYER, an individual,
MEYER BROTHERS, an entity doing business
on its own and doing business as a number of
other companies,
MARTIN JEFFERY AND RANDALL MEYER,
an entity,
MF&R INC, a Nebraska Corporation,
GAVILON GROUP LLC, a Delaware Company
registered to conduct business in Nebraska,
GAVILON LLC, a Delaware Company registered
to conduct business in Nebraska,
GAVILON GRAIN, LLC, a Delaware Company
registered to conduct business in Nebraska,
MARUBENI AMERICA CORPORATION, and
FARM BUREAU FINANCIAL SERVICES,

Defendants.

GAVILON GRAIN, LLC,

Third-Party Plaintiff,

v.

ART ANDERSON FARMS, INC.

Third-Party Defendant.

8:13CV367

MEMORANDUM
AND ORDER

This is a negligence action in which plaintiff Doyle Tucker claims he was injured after unloading grain from a truck at an elevator in Paxton, Nebraska, on December 12, 2009.¹ His wife, Neva Tucker, claims derivative damages.

The truck was operated by defendant Victor Perez and owned by defendants Martin D. Meyer and Jeffery J. Meyer, who are alleged to do business under the fictitious names of “Meyer Brothers” and “Martin Jeffery and Randall Meyer.” Both entities are alleged to be alter egos of defendants Martin D. Meyer and Jeffery J. Meyer and non-party Randall Meyer. Defendant M.F.&R. Inc. is also alleged to be the alter ego of these three individuals.

Defendant Gavilon Grain, LLC, is the operator of the grain elevator.² It has filed a third-party complaint against Doyle Tucker’s employer, Art Anderson Farms, Inc., claiming rights to contribution and indemnity. Defendant Farm Bureau Financial Services has a subrogation interest as the workers’ compensation insurer for Art Anderson Farms, Inc.

Three motions for summary judgment are pending: (1) Filing No. [86](#), filed by defendant M.F.&R. Inc. for the purpose of establishing that it did not exercise any control over the truck or the driver and is not the alter ego of the truck’s owners; (2) Filing No. [100](#), filed by defendant Gavilon Grain, LLC, for the purpose of establishing that its alleged acts of negligence³ did not proximately cause plaintiffs’ injuries; and

¹ It is alleged that the truck had a defective braking system; that while Tucker reached under the truck to release the slack adjuster on a locked brake for the fourth time that day so the truck could leave the unloading pad, the driver exited the vehicle without setting the emergency brake or putting it in gear; and that the truck then rolled backwards over Tucker’s leg when he succeeded in releasing the slack adjuster.

² Claims against related companies, defendants Gavilon Group, LLC, Gavilon, LLC, and Marubeni America Corporation, have been dismissed.

³ It is alleged that defendant Gavilon Grain, LLC, was negligent by failing to implement safety procedures, failing to provide employee training, failing to mandate

(3) Filing No. [118](#), filed by third-party plaintiff Gavilon Grain, LLC, for the purpose of establishing its right to indemnification under the terms of its contract with third-party defendant Art Anderson Farms, Inc.

After careful review, I find that each of the motions should be denied because genuine issues of material fact exist with respect to the issues presented.

Accordingly,

IT IS ORDERED:

1. Filing No. [86](#), defendant M.F.&R. Inc.'s motion for summary judgment, is denied.
2. Filing No. [100](#), defendant Gavilon Grain, LLC's motion for summary judgment, is denied.
3. Filing No. [118](#), third-party plaintiff Gavilon Grain, LLC's motion for summary judgment, is denied.

DATED this 7th day of May, 2015.

BY THE COURT:

s/ Richard G. Kopf

Senior United States District Judge

that wheel chocks be used when unloading trucks, allowing the truck driven by Perez to enter onto the property on multiple occasions in a defective condition, and creating downward sloping unloading pads.